ALLIED SIGNAL INC. & ANOR. v. THE COMMISSIONER OF STAMP DUTIES

[O.C.J. (Grimberg J.C.) December 4, 1987]

[Singapore — Originating Motion No. 116 of 1987]

Revenue Law — Stamp duties — Ad valorem duties — Whether agreements and assignment subject to stamp duties or ad valorem duties — Whether section 22(3) of Stamp Duties Act (Cap. 312, 1985 Ed.) applicable or whether section 21(3) of the Act (Cap. 147, 1970 Ed.) applicable.

Statutory Interpretation — Revised Edition of the laws — Declaratory statutes — Having retrospective effect.

By an agreement (Agreement One), BP agreed to sell, and the first appellant agreed to purchase, certain assets of BP and certain interests in a building agreement in which BP was one of the parties. Under Agreement One, the first appellant had the right to nominate another person to take over its rights and interests in Agreement One. By another agreement (Agreement Two), the first appellant nominated the second appellant and thereby the second appellant acquired the rights and interests of the first appellant under Agreement One. By a deed of assignment made between BP and the second appellant, the second appellant acquired BP's rights and interests in the building agreement.

The respondent stated that stamp duty of $108,800 was payable on Agreement One. He also assessed that an *ad valorem* duty of the same amount was payable for the assignment. However, no duty was payable for Agreement Two. The appellants were dissatisfied with the decisions of the respondent. They paid the duties but appealed. The respondent then stated a case for the decision of the High Court in accordance with section 40(2) of the Stamp Duties Act.

The case stated by the respondent raised the following questions:

(a) whether the respondent was correct in deciding that the assignment was chargeable to *ad valorem* duty, having charged *ad valorem* duty on Agreement One;

(b) if not, how the two documents should be stamped; and

(c) whether the first appellant was entitled to the return of $108,800 being the amount of stamp duty paid to the respondent on Agreement One.

Held: (1) the respondent was not correct in deciding that the assignment was chargeable to *ad valorem* duty. The assignment was entitled to the benefit of section 22(3) of the Stamp Duties Act. Agreement One was correctly stamped. Agreement Two was not chargeable since it was not an agreement falling within section 22(2) of the Act;

(2) the respondent should repay to the second appellant the sum of $108,800 which was paid by the second appellant for the assignment.

ORIGINATING MOTION.

Koh Kok Wah for the appellants.

Lucy Hangchi (Mrs.) for the respondent.

Cur. Adv. Vult.

Grimberg J.C.: This is a case stated for my determination under section 40 of the Stamp Duties Act ("the Act"), the appellants being dissatisfied with an assessment of the respondent, the Commissioner of Stamp Duties. The first appellant is Allied Signal Inc. ("Allied Signal") and the second appellant is Norplex Singapore Ltd. ("Norplex"), a subsidiary of Allied Signal.

By an agreement dated January 28, 1986 ("Agreement One") BP Singapore Pte. Ltd. ("BP"), a Singapore incorporated company, agreed to sell, and Allied Signal agreed to purchase, certain of BP's assets in Singapore, including the whole of BP's interest in a building agreement made between itself and the Jurong Town Corporation ("the building agreement"). The consideration was to be a sum of US$3.8 million, apportioned as to US$3.2 million for the assets other than the interests passing under the building agreement, and as to US$600,000 for the interests which passed under the building agreement. Clause 21 of Agreement One conferred upon Allied Signal the right to designate a subsidiary to take the interests which were to pass under Agreement One, including the interests under the building agreement.

On February 12, 1986, Allied Signal's solicitors brought Agreement One to the respondent under section 37(1) of the Act, and applied for his opinion as to whether it was chargeable with any duty and, if so, the amount of duty chargeable.

By his reply dated February 21, 1986, the respondent stated, *inter alia*, that Agreement One would be liable to *ad valorem* duty. He also stated that the deed of assignment (then contemplated as an assignment from BP to Allied, Norplex not having entered into the picture) would not be liable to any duty "by virtue of section 21(3) of the Act".

On February 27, 1986, Norplex wrote to its parent, Allied Signal, as follows:

"Allied-Signal Inc.
Columbia Rd. & Park Ave.
Box 1087R
Morristown, NJ07960

Attention: Alan Belzer

Gentlemen:
We refer to an Agreement for Sale and Purchase dated 28th January 1986 ("the Sale and Purchase Agreement") made between BP Singapore Ltd ("BP") and Allied-Signal Inc. whereunder you agreed to purchase from BP certain assets used in connection with BP's laminating manufacturing business in Jurong in Singapore.

As you entered into the Sale and Purchase Agreement with the intention that upon our incorporation we would purchase all the rights title and interests in the assets which BP agreed to sell to you under the Sale and Purchase Agreement, you now confirm your agreement to sell to us all the said rights title and interests in the assets which BP agreed to sell to you under the Sale and Purchase Agreement at the same price mentioned then.

In consideration of our reimbursing you the sum of US$380,000 which you have paid as a deposit to BP and paying the balance of the purchase price for the assets to BP on the completion date mentioned in the Sale and Purchase Agreement, you shall procure BP's agreement to assign or deliver to us on completion all the assets agreed to be sold under the Sale and Purchase Agreement.

As confirmation of this agreement between us, kindly sign and return to us the duplicate copy of this letter".

This letter was subsequently countersigned on behalf of Allied-Signal, to signify its confirmation of the contents of the letter.

By an agreement dated February 28, 1986 ("Agreement Two") between BP, Allied Signal and Norplex, it was acknowledged by the parties that Allied Signal, pursuant to the right conferred upon it by clause 21 of Agreement One, had designated Norplex to take the interests purchased by Allied Signal under Agreement One, including BP's interest under the building agreement, in place of Allied Signal. Agreement Two provided that Norplex was to be bound to BP by the terms and conditions of Agreement One, Allied Signal remaining secondarily bound by those terms and conditions.

By a deed of assignment, also dated February 28, 1986 ("the assignment") made between BP and Norplex, BP assigned its interest under the building agreement to Norplex. The assignment contained the following recital:

"4. AND WHEREAS by a subsequent agreement between the Original Purchaser and the Assignee, the Original Purchaser having obtained the prior consent of the Assignor agreed to sell to the Assignee all the right title estate and interest in the said property which it agreed to purchase from the Assignor under and by virtue of the Sale and Purchase Agreement at same price payable by the Original Purchaser to the Assignor under the Sale and Purchase Agreement".

For the purposes of the assignment, the assignor was BP, the original purchaser was Allied Signal and the assignee was Norplex.

On March 7, 1986, Agreement Two and the assignment were brought to the respondent under section 37(1) of the Act, for his opinion as to whether they were chargeable with any duty and, if so, the amount of duty chargeable.

The respondent, having requested and obtained information from the applicant relevant to the value of the property passing, obtained a valuation from the government valuer of $3.64 million for the interests which passed under the building agreement.

By a letter dated June 23, 1986, the respondent informed the appellants' solicitors that the stamp duty payable on Agreement One was $108,800, calculated upon the basis of the relevant provision of the First Schedule to the Act. Realizing that the assignment was to be an assignment to Norplex, and not to Allied Signal, he concluded that the assignment was also stampable and assessed *ad valorem* duty on the assignment at $108,800. The respondent stated that, upon payment of the duty assessed on the assignment, Agreement Two would not be liable to stamp duty by virtue of section 21(5) of the Act.

The appellants, being dissatisfied with the assessment of the respondent, and having paid the duty assessed on Agreement One and the assignment, appealed. The respondent thereafter stated and signed a case in accordance with section 40(2) of the Act, by which I am now required to determine the following questions:

(a) whether the respondent was correct in deciding that the assignment was chargeable to *ad valorem* duty, having charged *ad valorem* duty on Agreement One;

(b) if not, how the two documents should be stamped; and

(c) whether the first appellant, Allied Signal, is entitled, under section 22(7) of the Act, to the return of $108,800 being the amount of stamp duty paid to the respondent on Agreement One.

Section 22 of the Act, the effects of which fall to be considered in these proceedings, is in the following terms:

"22. (1) Any contract or agreement for the sale of any equitable estate or interest in any property whatsoever or for the sale of any estate or interest in any property except lands, tenements, hereditaments or heritages, or property locally situate outside Singapore, or goods, wares or merchandize, or stock or marketable securities, or any ship or vessel, or part interest, share or property of or in any ship

or vessel, shall be charged with the same *ad valorem* duty, to be paid by the purchaser, as if it were an actual conveyance on sale of the estate, interest or property contracted or agreed to be sold.

(2) Where the purchaser has paid such *ad valorem* duty and, before having obtained a conveyance or transfer of the property, enters into a contract or agreement for the sale of that property, the contract or agreement, shall be charged, if the consideration for that sale is in excess of the consideration for the original sale, with the *ad valorem* duty payable in respect of such excess consideration, but shall not otherwise be chargeable with any duty.

(3) Where the duty has been duly paid in conformity with subsection (1) or (2), the conveyance or transfer made to the purchaser or sub-purchaser, or any other person on his behalf or by his direction, shall not be chargeable with any duty, and the Commissioner, upon application, either shall denote the payment of the *ad valorem* duty upon the conveyance or transfer, or shall transfer the *ad valorem* duty thereto upon production of the contract or agreement, or contracts or agreements, duly stamped.

(4) Where any such contract or agreement would, apart from this section, not be chargeable with any duty, the contract or agreement shall be regarded as duly stamped for the mere purpose of proceedings to enforce specific performance or recover damages for the breach thereof.

(5) Where such contract or agreement would, apart from this section, not be chargeable with any duty, and a conveyance or transfer made in conformity with the contract or agreement is presented to the Commissioner for stamping with the *ad valorem* duty chargeable thereon within the period of 6 months after the first execution of the contract or agreement, or within such longer period as the Commissioner may think reasonable in the circumstances of the case, the conveyance or transfer shall be stamped accordingly, and the conveyance or transfer and the contract or agreement shall be deemed to be duly stamped.

(6) Nothing in subsection (5) shall alter or affect the provisions as to the stamping of a conveyance or transfer after the execution thereof.

(7) The *ad valorem* duty paid upon any such contract or agreement shall be returned by the Commissioner in case the contract or agreement is afterwards rescinded or annulled, or for any other reason is not substantially performed or carried into effect so as to operate as or be followed by a conveyance or transfer.

Counsel for the appellants argued, in essence, that Agreements One and Two, and the assignment were, upon a proper interpretation of section 22 of the Act, only capable of attracting *ad valorem* stamp duty once. He submitted that that was so for three alternative reasons, the first of which being that the assignment was entitled to the benefit of section 22(3) of the Act.

The argument as to the effect of section 22(3), read with section 22(1) and (2), went like this.

Agreement One was chargeable with *ad valorem* duty by virtue of section 22(1), since it provided for the sale of BP's equitable interest in the building agreement. Agreement Two was not chargeable at all, by virtue of section 22(2), since the consideration expressed to be payable under Agreements One and Two were identical. The assignment was *prima facie* liable to *ad valorem* duty, but was entitled to the benefit of section 22(3), since duty had been paid on Agreement One in conformity with section 22(1), and the assignment was made to Norplex upon the direction of Allied Signal, within the meaning of that subsection.

Therefore *ad valorem* duty was payable on Agreement One; but not on Agreement Two, or on the assignment.

The question arose as to whether, when considering if the assignment was entitled to relief, I should apply section 22(3) of the 1985 Revised Edition of the Act; or whether I was obliged to apply section 21(3) of the 1970 Edition of the Act ("the earlier Edition"). The former has already been set out; the latter is in the following terms:

"Where duty has been duly paid in conformity with the foregoing provisions, the conveyance or transfer made to the purchaser or sub-purchaser, or any other person on his behalf by his direction, shall not be chargeable with any duty, and the Commissioner, upon application, either shall denote the payment of the *ad valorem* duty upon the conveyance or transfer, or shall transfer the *ad valorem* duty thereto upon production of the contract or agreement, or contracts or agreements, duly stamped".

Section 22(3) of the 1985 Revised Edition differs from section 21(3) of the earlier Edition only to the extent that the words "... subsection (1) or (2) ..." have been substituted for the words "... the foregoing provisions ..." after the words "... in conformity with ...".

Counsel for the appellants submitted that I am bound to apply the words of section 22(3), and since duty had clearly been paid in conformity with section 22(1), the assignment was entitled to relief. Counsel further submitted that, even were I to apply section 21(3) of the earlier Edition the result would be same, because section 22(1) and section 22(3) could only have the same meaning. Insofar as section 21(3) was concerned, duty must be deemed to have been paid "under the foregoing provisions", since there was nothing to be paid under section 21(2).

That was the appellants' first alternative argument.

The response, generally, of the respondent was that the three documents related to two separate and distinct transactions, the first, a sale, *inter alia,* of BP's interests in the building agreement to Allied Signal under Agreement One; and the second, another sale of the same interests by Allied Signal to Norplex, which gave rise to Agreement Two and the assignment. Insofar as the appellants' first alternative argument was concerned, the respondent's case was that the assignment was not entitled to the benefit of section 22(3) because, upon a proper construction of that section, and section 21(3) of the earlier Edition, the assignment could only have been treated as having been duly stamped if stamp duty had been paid on both Agreement One and Agreement Two.

Counsel for the respondent pointed out that Agreements One and Two, and the assignment, were executed in January and February 1986, at which time the 1985 Revised Edition of the Act was not in force. The Order which brought it into force was dated March 16, 1987, and it provided for the Act to be brought into force with effect from March 30, 1987. Accordingly, the respondent was obliged to, and did, apply section 21(3) of the earlier Edition. In counsel's submission, the words "... in conformity with the foregoing provisions ..." in that section (although they could, in certain circumstances, mean "subsection (1) *or* (2)") must mean, in the context of this case, "subsections (1) *and* (2)". Since no duty was paid on Agreement Two, the assignment was clearly stampable in accordance with section 21(3).

Counsel recognized that the Law Revision Commissioners had altered the words of section 21(3) for the purpose of the 1985 Revised Edition of the Act. That was a fact, but whether that alteration altered the law was a matter of construction. If it did, then to apply section 22(3) would be to apply the amended law retrospectively, and that would be wrong.

Counsel for the respondent invited me to defer my decision in the matter, since the respondent had been informed that the Law Revision Commissioners are likely soon, in exercise of the powers conferred on them by section 23 of the Revised Edition of the Laws Act, to rectify section 22(3) by restoring the words of section 21(3) of the earlier Edition. Section 23 of the Revised Edition of the Laws Act is in the following terms:

"23. (1) The Commissioners may, by order published in the Gazette, rectify any clerical or printing error appearing in the revised edition of Acts or in any annual revision of Acts made pursuant to section 10, or rectify in a manner not inconsistent with the powers of revision conferred by this Act any other error so appearing.

(2) Every order made under this section shall be presented to Parliament as soon as possible after publication."

I was asked to postpone my determination of the questions arising in the case until the rectification had been effected. I declined to do so. Two days before the motion came on, there had been an application on behalf of the respondent for the vacation of the date fixed for the hearing, on the same grounds – namely that section 22(3) was likely to be rectified – and I had declined to vacate the date on the principle that a litigant must take the law, whatever it may mean, as he finds it.

In my judgment, BP's interest in the building agreement was "an equitable estate or interest in property", and accordingly (as the respondent contends and the appellants concede) the respondent was right in assessing and charging *ad valorem* stamp duty on the basis that Agreement One, insofar as it related to the building agreement, fell within the provisions of section 22(1) of the Act.

No duty fell to be paid under section 22(2) because the consideration for the sub-sale which arose as a consequence of Agreement Two was the same as the consideration provided for in Agreement One in respect of the original sale. There having been no excess consideration, no additional *ad valorem* duty was payable.

In my judgment Allied Signal, in making payment of *ad valorem* duty assessed under Agreement One, did so in conformity with section 22(1). It follows that since section 22(3) provides that where duty has been so paid under "subsection (1) *or* (2)" (emphasis mine) the assignment was not chargeable with duty.

In so concluding, I have applied section 22(3) of the 1985 Revised Edition.

Section 7 of the Revised Edition of the Laws Act is in the following terms:

"7.(1) The Commissioners shall, upon completion, transmit to the President a copy of the revised edition of Acts.

(2) The President may thereupon, by order published in the Gazette, provide that the revised edition of Acts shall come into force on such date as he may think fit.

(3) The revised edition of Acts shall, as soon as possible after the publication of such order, be published and presented to Parliament.

(4) From the date specified in the order referred to in subsection (2), the revised edition of Acts shall, without prejudice to sections 5 and 6, in all courts and for all purposes be the sole and only proper Statute Book of Singapore in respect of Acts contained therein".

It follows from section 7(4) that the 1985 Revised Edition of the Stamp Duties Act is the Edition of that Act, and the only Edition of that Act, at which I may look. I accept the submission of counsel for the appellants that the new set of Acts brought in by the Revised Edition of the Laws Act are declaratory statutes, and must therefore be considered to have retrospective effect. It follows, notwithstanding the fact that the Revised Edition of the Acts was not brought into force until March 30, 1987, that those Acts had retrospective effect. Accordingly, the Revised Edition of the Stamp Duties Act must be considered to have been in force at the date of coming into operation of the earlier Edition, and therefore in January and February 1986, when Agreements One and Two, and the assignment, were executed. Maxwell on *Interpretation of Statutes* (12th Ed.) at p. 224 states:

"If a statute is in its nature a declaratory Act, the argument that it is not to be construed so as to take away previously vested rights is inapplicable";

and later:

"Similarly, section 6 of the Finance Act 1898 provided, for the removal of doubt, that the definition of 'conveyance on sale' in the Stamp Act 1891 included an order for foreclosure. It was held that section 6 was declaratory and therefore retrospective, so that an order of 1896 foreclosing a legal mortgage required stamping as a conveyance on sale".

Even if section 22(3) of the 1985 Revised Edition has no retrospective effect, I have reached the conclusion that section 21(3) of the earlier Edition must mean the same as section 22(3) of the Revised Edition. That is so because the Law Revision Commissioners appointed under section 3(1) of the Revised Edition of the Laws Act had no power to make substantive amendments to the Stamp Duties Act, or to any other statute.

The powers of the Commissioners are set out in section 4 of the Revised Edition of the Laws Act. Nothing in the section empoers the Commissioners to change the law; indeed, counsel for the respondent conceded that it was no part of her case that the Commissioners had acted *ultra vires* in altering the words appearing in section 21(3) of the earlier Edition to the words that are now to be found in section 22(3) of the 1985 Revised Edition. If the Commissioners acted *intra vires* the Act by which they were appointed, and I must so presume, it must follow that section 21(3) of the earlier Edition and section 22(3) of the Revised Edition have the same meaning.

In the result, I find in favour of the appellants on the first of their three alternative arguments, and hold that the assignment was not chargeable, being entitled to the benefit provided by section 22(3) of the Act, the assignment (to Norplex, upon the direction of Allied Signal) having been preceded by Agreement One, which was stamped in conformity with section 22(1).

That conclusion enables me to answer the questions raised in the case, without the need to address the appellants' two alternative arguments, which were (i) that Agreement One was entitled to the benefit of section 22(5), as deemed to have been stamped, *ad valorem* duty having been paid on the assignment; alternatively (ii) that Agreement One was entitled to the benefit of section 22(7), as never having been carried into effect so as to be followed by a conveyance from BP to Allied, resulting in duty paid on Agreement One having to be returned.

Accordingly, I answer the questions raised in the case as follows:

(a) Whether the respondent was correct in deciding that the assignment was chargeable to *ad valorem* duty, having charged *ad valorem* duty upon Agreement One:

No.

(b) If not, how the documents should be stamped:

Agreement One was correctly stamped; Agreement Two was not chargeable, not having been an agreement falling within section 22(2) of the Act. The assignment was not chargeable, having been entitled to the benefit of section 22(3) of the Act.

(c) Whether the first appellant, Allied Signal, is entitled, under section 22(7) of the Act, to the return of $108,800 being the amount of stamp duty paid to the Commissioner on Agreement One.

This question does not arise to be answered, having regard to the answer to question (a).

In the result, the respondent will repay to the second appellant the sum of $108,800 paid by the second appellant to the respondent in conformity with the respondent's assessment of duty chargeable on the assignment; and the respondent will pay the appellants' costs of the motion.

Order accordingly.

Solicitors: *Arthur Loke & Partners.*

A MALAYSIAN REPORTS

PUBLIC PROSECUTOR v. CHOU TAI CHUAN & ANOR.

[A.Cr.J. (K.C. Vohrah J.) November 21, 1987]

B [Kuala Lumpur – Federal Territory Criminal Appeals Nos. 50 & 51 of 1987]

Criminal Procedure – Bail – Forfeiture of bail bonds – Procedure to be followed – Whether bailors served with notices to produce accused.

C Chou Tai Chuan and Henry Ong Yip Chung were charged separately before a magistrate. Henry Ong pleaded guilty to one charge under the Passports Act 1966. Chou Tai Chuan pleaded guilty to two charges, one under the Passports Act 1966 and the other under the National Registration Regulations 1960. They were convicted and sentenced accordingly. Both appealed against their sentences of im-
D prisonment and were released on bail of $40,000 in two sureties each.

Both parties absconded and as a result the court had to deal with the estreatment of the bail bonds. In the case of Chou Tai Chuan, the bailors were David Siew and Quak May May. As for Henry Ong, the bailors were Liew Nooi @ Liew Lin Ying and Beryl Ang Geok Har @ Ang Geok Ha.
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Held: (1) as for Quak May May, since she had no notice to produce the accused on the relevant date she could not be held responsible for her failure to so produce the accused. Therefore she need not show cause and was accordingly discharged;

F (2) since David Siew showed some measure of negligence, a fair amount of the penalty should be forfeited. $5,000 was accordingly forfeited;

(3) as for the case of Henry Ong, since the bailors had not been served notices to produce the accused on the relevant date, they were also discharged from showing cause.

Cases referred to:

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(1) *Khor Ewe Suan & Anor.* v. *Public Prosecutor* [1964] M.L.J. 220.
(2) *Tarni Yadav & Anor.* v. *State* [1962] 2 Cr. L.J. 627.
(3) *Pohap Singh Bharmasingh* v. *State* [1961] 1 Cr. L.J. 673.
H (4) *Fateh Chand Wadhumal* v. *Emperor* 41 Cr. L.J. 802

FORFEITURE OF BAIL BONDS.

Raus bin Shariff (Deputy Public Prosecutor) for the Public Prosecutor.

I *Mohamed Faidz bin Darus* for the respondents.

Cur. Adv. Vult.

K.C. Vohrah J.: Two persons, husband and wife, were charged separately before a magistrate.